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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Jagdish Bhalla, Ag Chief Justice

Writ Petition (T) No. 4798 of 2007

Petitioner — M/s Kanker Roadways, A Partnership firm through Partner Shri Pritam Singh Garcha, S/o Late Jogender Singh Garcha, Aged about 53 years, R/o Civil Lines, Raipur (CG)

Versus

Respondents

1. State of Chhattisgarh Through Secretary, Department of Transport, DKS Bhawan, Raipur
2. Tax Officer & Assistant Transport Commissioner Chhattisgarh, Raipur

Writ Petition under Article 226 of Constitution of India.

Present: Shri BK Rawat, counsel for the petitioner.
Shri VVS Murthy, Deputy Advocate General for the State.

ORAL ORDER
(Passed on 14th August, 2007)

Heard learned counsel for the parties on the preliminary objection of alternative remedy.

Learned counsel for the petitioner relies upon two judgments of Hon'ble Apex Court; first is, ***Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai and others*** reported in ***(1998) 8 Supreme Court Cases 1***, wherein Hon'ble Apex Court observed that under Article 226 of the Constitution the High Court

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having regard to the facts of the case, has judicious discretion to entertain a petition in spite of the fact that there is an alternative remedy. However, the High Court has self-imposed restrictions whenever effective and efficacious remedy is available. Normally, the jurisdiction conferred under Article 226 of the Constitution of India is not exercised although consistently the Apex Court has held that the alternative remedy does not operate as a bar, specially in three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an act is challenged. In the matter of ***LK Verma Vs HMT Limited and another - AIR 2006 Supreme Court 975***, the aforesaid subject matter is considered in detail and various circumstances have been shown where the interference was directed by the Court, in spite of availability of alternative remedy.

It is admitted case of the parties that there is alternative remedy of filing the appeal. This Court finds that the appellate authority can even grant interim order, therefore, it can be said that the alternative remedy is efficacious. However, this Court has further looked into the fact whether petitioner has alleged the violation of fundamental right. I find that no such plea has been raised by learned counsel for the petitioner. Secondly, petitioner

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has not alleged any violation of principles of natural justice. Further petitioner did not raise any ground that the demand notice is without jurisdiction in light of the Apex Court judgments while examining the alternative remedy. I find after testing the three grounds available in the Supreme Court's judgments that there is an alternative remedy, efficacious in nature. Therefore, this writ petition is dismissed on the ground of alternative remedy.

Sd/-
Ag. Chief Justice

padma/s